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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,997	03/17/2004	Constance Pauline Francis	1098.2.1	4406
36491	7590	09/03/2004	EXAMINER	
KUNZLER & ASSOCIATES 8 EAST BROADWAY SALT LAKE CITY, UT 84111				WEINSTEIN, STEVEN L
		ART UNIT		PAPER NUMBER
		1761		

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/802,997	FRANCIS ET AL. <i>CF</i>
<b>Examiner</b>	<b>Art Unit</b>	
Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____.  | 6) <input type="checkbox"/> Other: _____.                                   |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Scott (1,393,045).

In regard to claim 1, Scott disclose a dissolvable flavoring capsule comprising a capsule and a selected amount of a dissolvable flavoring mixture disposed within the capsule, the dissolvable flavoring mixture comprising a flavoring additives (e.g. the coffee extract or sugar or other sweetening medium) and filler (e.g. the desiccated milk or sugar). See e.g. page 3 lines 53 plus in this regard. This is all claim 1 is seen to positively recite. In regard to claim 2, Scott discloses the capsule is a gelatin capsule.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-8 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott ('045) in view of Hutchison et al (5,871,798) and Sanker (5,620,707).

In regard to claim 3, Claim 3 differs from Scott in that the capsule is flavored. As evidenced by Hutchison et al and Sanker et al, it was well established to add flavor to gelatin capsules, large or small. See in this regard, col. 7, lines 4 plus and column 4, lines 2 plus of Hutchison et al and col. 3, lines 59 plus of Sanker. To modify Scott and provide the capsule with

a flavor for its art recognized and applicants intended function would therefore have been obvious in view of the art taken as a whole. In regard to claim 4, since the art taken as a whole (see Hutchison et al and Sanker et al) teaches a larger variety of products can be provided in dissolvable capsules and it was Known to provide both the contents as well as the capsule with flavoring, to modify Scott and provide both contents and capsules with the same flavoring is seen to have been an obvious matter of choice. In regard to claim 5, Sanker et al discloses providing the capsules with a color corresponding to the flavor of the contents (col. 6, para 1 of Sanker et al.). In regard to claim 7, although the product of Scott would include flavoring oil (i.e. the essential oils that make up coffee flavor), the art taken as a whole teaches it is notoriously old to provide a flavoring oil containing capsule and to modify Scott, if necessary, and substitute one conventional material for another conventional materials would have been obvious. Similarly, in regard to claim 8, since Sanker et al discloses employing coloring agents to identify a flavor, to employ colored flavoring oil to identify color could have been an obvious matter of choice in view of the art taken as a whole. In regard to claim 6, claim 6 recites the use of a non-dairy creamer. Scott discloses the use of dessicated milk. Applicant is not the inventor of non-dairy creamers which are widely used as a milk substitute. To modify the combination and substitute one conventional material for its conventionally known substitute would therefore have been obvious. In regard to claim 11, once it was known to provide a multitude of ingredients in a capsule, the particular conventional ingredient one chooses to employ to impart to a food and/or beverage and their concentrations are seen to have an obvious matter of choice. In regard to claim 17, which recites a compact container, all food products to be commercially transported

must be packaged. Sanker et al (col. 5, paragraph 4 plus disclose a container for his capsules.

The size of the container is seen to have been an obvious matter of choice,

Claims 12, 13, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Sanker et al who teaches a method for flavoring a food as recited in claims 12, 13, 15, and 16. See e.g. col. 4, line 21 plus wherein it is taught that one or more capsules are placed into a beverage wherein the capsule is gelatin (col. 2, lines 20 plus), wherein the flavoring additive comprises flavoring oil (e.g. natural flavors which contain flavoring oils), and wherein sweetener is a component (col. 3, para. 1).

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sanker et al in view of Scott and Hutchison et al. Claim 14 recites nondairy creamer which as noted above, is a well established food additive and its use in a capsule for its art recognized and applicants intended function would have been obvious.

The remainder of the references cited on the USPTO 892 form are cited as pertinent art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af  
August 19, 2004

*S. Weinstein 1761*  
STEVE WEINSTEIN  
PRIMARY EXAMINER  
8/30/04